



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

DECISION AND REASONS

Dispute Codes: CNC, RR, AT, & FF

Introduction

This hearing dealt with an application by the tenant seeking to have a one month Notice to End Tenancy for cause set aside. The tenant also seeks orders for the landlord to complete repairs or maintenance on the rental unit or property and orders setting conditions on or restricting the landlord's right to enter the rental unit. Both parties appeared for the hearing, provided affirmed evidence and had the opportunity to respond to the evidence provided by the other party.

Part of the tenant's evidence was recorded telephone conversations, including a recent telephone call with the safety inspector. The landlord acknowledged receiving this evidence and under questioning, acknowledges that he had not attempted to listen to this evidence prior to the hearing.

Although neither party called the safety inspector in as a witness, both were in agreement to adjourn the hearing in an attempt to have the safety inspector appear as a witness. The hearing was adjourned to reconvene on February 23, 2009. Unfortunately, the parties were unable to arrange for the safety inspector to attend.

Issues to be Determined

Should the one month Notice to End Tenancy be set aside? Is the landlord entitled to an Order of Possession?

Background and Evidence

The landlord and the tenant have been before the Residential Tenancy Branch on multiple occasions and the background is well documented in those previous decisions. The most significant dispute between the landlord and the tenant relates to the tenant's cultivation of marijuana with a legal permit.

Notwithstanding that many of the same issues were brought forward by the landlord in the previous disputes, the one month Notice to End Tenancy served on January 30, 2009 was issued on the basis that the tenant has put the landlord's property at significant risk and seriously jeopardized the landlord's lawful rights. This notice was issued on the basis of a British Columbia Safety Authority Certificate of Electrical Inspection conducted at the rental unit on January 14, 2009.

The safety inspection determined that there was a non-compliance issue with the electrical wiring which was installed without proper permits and inspection and by an

unqualified person. The safety certificate indicates that the site should not be energized and that the non-compliances are to be corrected by January 28, 2009.

The landlord relies on this inspection certificate in support of the notice. The tenant relies on his follow up conversations with the safety inspector which confirms that the original electrician failed to obtain the permits and that he has taken all reasonable steps to have the problem corrected.

The tenant and landlord made subsequent submissions respecting debris in the yard of the rental unit and the landlord's requirement to maintain the yard in response to the tenant's request that the landlord comply with the *Act*.

Analysis

I deny the tenant's application requesting an order setting conditions on the landlord's right to enter the rental unit and requesting that repairs are completed. I am satisfied that the landlord has complied with the *Act* in providing the tenant proper notice to enter the rental unit and there is no basis for setting conditions on the landlord. I also find that it is premature to provide orders to the landlord to complete repairs. The issues are minor and the tenant should provide written request to the landlord to have the compost pile removed prior to filing an application seeking an Order. Also, it is at the landlord's discretion as to how and when they will conduct maintenance such as pruning trees. I also find that the tenant has failed to provide any warning or letter to the landlord suggesting that the old outdoor lights and power connects are a danger and again it is premature to issue an order.

I find that the landlord had sufficient grounds to issue a one month Notice to End Tenancy for cause based on the evidence of the safety inspection. However, the landlord failed to diligently follow up on the issue or to provide any evidence to counter the evidence submitted by the tenant confirming that the matter has been raised with the Safety Inspector. I accept the evidence of the tenant in the form of the tape recorded conversation with the Safety Inspector that the issue is largely a permit issue and that a qualified electrician completed the original wiring.

However, the evidence provided does not definitively address the issue of what needs to be corrected or whether the continued electrical supply to the wiring remains a safety issue. I am satisfied on the balance of probabilities that the issue appears to largely be a permit issue which requires that the permit be taken out and a follow up inspection completed and that this suggests that there is no severe safety hazard. I am also satisfied that the tenant has been in contact with the Safety Inspector and the original electrician to comply with the deficiencies identified in the inspection of January 14, 2009.

I am satisfied that the landlord has failed to meet the burden of proof required to support the one month Notice to End Tenancy. The tenant has responded reasonably to the Safety Authority and the one month Notice to End Tenancy. I also accept that the Safety Inspector is satisfied, up to the date of these hearings that the matter is being addressed in a reasonable and safe manner. I accept the evidence before me that the

Safety Inspector has been in contact with both the tenant and an electrician to resolve the problems.

However, I am concerned about the alleged issue raised by the landlord that the tenant's wiring is still energized contrary to the order of January 14, 2009. I have no evidence that the Safety Inspector has amended the safety certificate allowing the continued electrical supply. Yet I also do not have any evidence before me that the Safety Authority or the landlord have taken any further steps to address this alleged breach of the January 14, 2009 order.

Therefore, I Order that the tenant immediately de-energizes the affected wiring until such time as the landlord has been given written confirmation from the British Columbia Safety Authority that the wiring meets all health and safety requirements.

Failure by the tenant to de-energize the wiring until the Safety Authority has confirmed the system meets all safety requirements could result in jeopardizing the landlord's property and form the grounds to end the tenancy.

I grant the tenant's application and set aside the one month Notice to End Tenancy. This tenancy will continue with full force and effect.

Conclusion

I have granted the tenant's application in part and I have set aside the one month Notice to End Tenancy for cause. I have determined, on the balance of probabilities that the safety issue identified by the Safety Authority is a permit issue and there is insufficient evidence before me to support the conclusion that the landlord's property is at significant risk. However, the tenant has been Ordered to immediately de-energize the wiring until all inspections and permits required have been issued by the British Columbia Safety Authority. The tenancy will continue with full force and effect.

I do not accept the tenant's argument that the landlord had no basis to issue the notice; however, as there was an initial safety issue which warranted the issuance of a Notice to End Tenancy.

I have dismissed the tenant's requests for repairs with leave to re-apply. I find that these issues are minor and prematurely raised in this application as the tenant has not provided the landlord with written notice of the problem or provided the landlord with a reasonable time to respond to the tenant's concerns.

Finally, I dismiss the tenant's request to set conditions on or limit the landlord's right to enter the rental unit within the provisions of section 29 of the *Act*. I have determined that the landlord has complied with the *Act* respecting access and will likely do so in the future.

Dated March 17, 2009.

Dispute Resolution Officer